



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

June 7, 1989

Honorable Bill Sims
State Senator
25th Senatorial District
P. O. Box 12068
Room 421, Capitol Bldg.
Austin, Texas 78711-2068

LO-89-47

Dear Senator Sims:

You ask whether a state agency with the power of eminent domain may take a homestead by condemnation. Article XVI, section 50, of the Texas Constitution provides:

The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead; nor may the owner or claimant of the property claimed as homestead, in married, sell or abandon the homestead without the consent of the other spouse, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of

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defeasance shall be void. This amendment shall become effective upon its adoption.

That provision protects homestead property from a forced sale for the payment of certain types of debts. See also Prop. Code § 41.002 (providing that homestead is exempt from forced sale for payment of certain debts); See generally Tex. Const. art. XVI, § 51 (definition of homestead). Neither article XVI, section 50, of the constitution nor section 41.002 of the Property Code would protect a homestead from being taken by condemnation. Downs v. City of Abilene, 387 S.W.2d 68 (Tex. Civ. App. - Fort Worth), rev'd on other grounds, 391 S.W.2d 41 (1965) (plea of homestead not a defense to condemnation by a city). See generally Tex. Const. art. I, § 17 (property may not be taken for public use without payment of adequate consideration); Prop. Code § 21.043 (dealing with displacement from dwelling or place of business because of condemnation of property); Prop. Code § 21.044 (relocation assistance program). Of course, the scope of a particular state agency's power of eminent domain would depend on the specific authority given to that agency.

Yours very truly,



Sarah Woelk
Letter Opinion Section
Opinion Committee

SW/lcd

Ref.: ID# 6346